

# State of Utah

## Title and Escrow Commission Meeting

### Meeting Information

Date **March 2, 2006** Time **9:30 to 4:30 PM** Place **Title West Co., 2735 E. Parleys Way, Suite 207**

### Members

(Absent = x)

#### Commission Members

Chairperson, Joyce W. Clark, *Washington* Darwin L. Johnson, *Wasatch*  
David M. Lattin, *Salt Lake* Glen W. Roberts, *Utah* R. Curt Webb, *Cache*

#### Department Staff

John E. "Mickey" Braun, Jr. Perri Babalis xBrad Tibbitts Gerri Jones  
*Ass't Commissioner* *AG Legal Counsel* *Director, P&C* *MC Examiner*  
Sheila Curtis xGale Lemmon Jilene Whitby  
*MC Examiner* *AG Prosecutor* *PIO/Recorder*

#### Visitors

None

### Minutes

- I. **Welcome and Introductions** - Chair - Joyce Clark  
At 9:40 a.m. Joyce began the meeting.
- II. **Adoption of Minutes of Previous Meeting**  
Glen made a **motion** to accept the minutes of the previous meeting without change. David seconded the motion and the vote was unanimous in favor.
- III. **Review & Concur with Licensee Report**  
The new licensee report is produced on the 4<sup>th</sup> of each month.
- IV. **Review & Concur with Enforcement Case Report**  
No cases were resolved in February.
- V. **Open title investigation** / Mickey Braun
  - Mickey provided each member with a report on open investigations. This will be updated quarterly or semi-annually. Brian Hansen will update it. The next report will include types of complaints and the number closed. This report only provides the number of open investigations and the number of days they have been open. About 79% are completed in 45 days. **This information will be put on the web.** A letter will be sent to complainants to let them know the department has received their complaint. A trend report outlining the subject matter of investigations will be developed and delivered quarterly or semi-annually depending on the volume of investigations.
  - Gerri noted that many of the current investigations involve re-conveyance and marketing problems, which are usually handled quickly.
- VI. **Action Items from Previous Meeting**
  - **Can Missed Questions be Reviewed After Taking a Test?** / Mickey Braun  
He will be talking with those in charge of testing next week and should have an answer at the next meeting.
  - **Reports from underwriters on Fiduciary Rule**  
Darwin reported that the underwriters he contacted felt they needed more information before stating a preference. They wanted to know: Who cuts checks and pay utilities. Who pays the realtor? Who holds the funds? Will the change to a single fiduciary hurt smaller companies? Who benefits? Who pays what needs to be determined up front.

- The underwriters Joyce and Glen contacted were in favor of a single fiduciary. Underwriters were not aware of any losses.

## VII. Old Business

- **Legislative Review / Mickey Braun**  
HB 233, Insurance Licensing Amendments, passed. Mickey thought it reduced the C.E. requirement to six hours every two years, three of which are for ethics. He will check to be sure. All the GRAMA bills passed. All of the department's bills passed. HB 448, Standardizing Documents Filed with the County Recorder, went to Senate Rules and never came out.
- **Hearing for Escrow Filing Rules R592-3 & 4 / Gerri Jones**  
The hearings will be held March 23, 2006, 9a.m., Room 1112, State Office Building, behind the Capitol. Comments will be accepted until April 1, 2006. Joyce asked all **commission members and Perri to attend if they could. Joyce will present the purpose and intent of the rule.**
- **Split Closing Attorney General Opinion - Status / Perri Babalis**  
Split closings do not meet the definition of escrow. Escrow is not mentioned in the code and "fiduciary" is mentioned once in 31A-39-409(1)(c). The Utah Supreme Court has not addressed it. The statute must be amended before changes are made to split closings.
- **Fiduciary Rule**  
This rule has not been drafted. This rule was discussed throughout the new business discussions.

## VIII. Break for Lunch - 12:10 lunch

Resumed 12:50 p.m.

## IX. New Business

- **Complaints / Glen Roberts**
- **Sharing office space with realtors etc. / Sheila Curtis**
  - Sheila reviewed a situation where an escrow officer had a desk in a title agency. The escrow officer pays rent and the principals of both organizations are different. The nameplate on the desk may be the only thing distinguishing one operation from another.
  - Glen thought 31A-23a-402 was clear. The commissioner can make a finding regarding unfair competition and then a rule can be written. Mickey said a hearing or settlement was needed before a finding could be created. The settlement document goes to the administrative law judge (ALJ) who then makes a finding. The rule process will notify everyone of the finding.
  - Glen said the key to this issue is "unreasonable competition." It was suggested that a citation be issued. The ALJ will then make a decision. David made the **motion** to issue the citation. Curt seconded the motion and the vote was unanimous in its favor. Once the judge has made his decision the rule will then be written. **Mickey will verify the finding process for the next meeting.** Joyce asked that this be **put on the next agenda.**
- **Escrow Matters - article / Gerri Jones**
  - The issue in the article was regarding whether or not an escrowee has a duty to disclose fraud.
  - Perri said the case in the article was based on Texas law and may not relate to Utah law.
  - The Supreme Court would impose a higher standard. Perri said an agent or insurer are not obligated to report fraud, as specified in 31A 31-105. However, Subsection 110 requires someone like a hired auditor to report fraud to the Insurance Department. They are subject to a Class B misdemeanor if they do not.
  - Glen asked if the department had a specific instance where this was an issue. Gerri referred to the case involving John Harvey.
  - Glen noted that this issue is not affected by split or non-split closings.
- **Duties of an Escrow Agent / Glen Roberts**

- Schoepe v. Zions Bank outlined the duties of an escrow. Zions did not disclose and the court said they did not have the duty to do so.
- Perri asked that a copy of the NAIC Model Act be given to each Commission member. Gerri said there was a model for both title insurers and agencies. The NAIC suggests both be put into effect at the same time. Mickey suggested the department go through it and insert state laws first. Curt said they should either modify the models to eliminate split closings or create a rule to fit the market. Legislative Research will be approached after the Commission reviews and amends the proposed current statute/model law integration document. Gerri was assigned the task of putting comparing current statute with model law and proposing changes to current law. Glen will talk with a few legislators to see what they think.
- Joyce asked if Ron, Bruce, or Shawn should be invited to the next meeting? Curt suggested Jeff Jensen of Landmark and Gerri suggested Canyon Anderson of Bachman Title could also be invited to attend and give their views.
- Perri suggested pushing code changes based on need to define escrow and fiduciary.
- Jilene will contact the NAIC for the most current copy of the model acts.
- Nothing in Title 7 relates to Title 31A.
- Darwin asked if it was possible to define the responsibilities of the buyer fiduciary and the seller fiduciary? Curt said the Commission needed an option to eliminating split closings. He thought it was easier to create fraud with a single fiduciary than two.
- Joyce asked if it would be possible to get CE credit for an open forum in various Utah areas to discuss this? Sheila said an outline would be needed. Glen suggested having a class about the role of escrow and fiduciary and then provide an open forum at the end. Glen said he would like to pursue the elimination of split closings because of problems they create.
- Mickey noted that it sometimes takes years to build consensus on an issue. The department will help craft a bill but the Commission should present it. Statistics will need to be collected to promote the bill. Once the bill is written it should be exposed for feedback.
- Glen asked what they wanted to do with the fiduciary Rule? It was suggested that they review the model acts and see what needs to be done to it.
- The escrow definition in the statute does not seem broad enough. Perri said the Supreme Court has defined an escrow's duties via case law and that escrow is not used in the statute. It needs to be connected to fiduciary. Curt suggested moving case law from Freegard v. First West into the model act.
- Joyce will invite Kenyon, Jeff and Bruce Mack. The department will be given two months to make adjustments to the model acts.
- Glen has an outline for the class. Joyce asked him to send it to Commission members to review. Each member can be an instructor in his/her own area if they want.
- Curt moved that Glen prepare the outline for the escrow class and members would use it in their areas. Darwin accepted the motion with the exception that Gerri teach in his area. The vote was unanimous in favor of the motion. It was suggested that several member of the Commission could teach each class. Glen will contact ULTA and let them know about the class. Joyce suggested as many members as could attend each class.
- Glen made the motion that the Commission review the model acts and come back with their thoughts next month. Curt seconded the motion and the vote was unanimous in its favor.

#### X. Other Business from Committee Members

- **Results of escrow cost analysis – 31A-19-209 (3) is it global or specific?**
  - Perri thought this cite allowed one to operate at a loss in any category listed, escrow or title.
  - Mickey noted that the department regulates it as a global requirement.

- Curt asked why the title industry was required to submit individual rates if we regulate them as global. Gerri said fees should not be charged off the cuff. Perri said it was because the statute requires it. Mickey asked if competition drives costs should the state be involved? Only certain lines of insurance are required to file premium rates like health and title. Curt noted that the market is driving escrow rates. We need to decide if it is a disclosure or regulatory issue. Joyce asked how the department knew if rates were discounted? Gerri said filed rates are compared to the rates shown on the HUD.
- Curt asked if it was right to dictate minimum rates? Review this issue in the model acts.

**XI. Reminder:** The Liaison meeting is April 3, 2:00 p.m. at Dave Moore's Office.

**XII. Adjourned:** 1:20 p.m.

***Next Meeting***

*9:30 a.m.*

<del>January 11, 2006</del>	July 12, 2006
<del>February 8, 2006</del>	August 9, 2006
<del>March 2, 2006</del>	September 13, 2006
April 12, 2006	October 11, 2006
May 10, 2006	November 8, 2006
June 14, 2006	December 13, 2006